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FEDERAL COMMUNICATIONS COMMISSION
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Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of

Amendment of Section 73.606(b) Table of
Assignments for TV Table of Allotments,
Television Broadcast Stations, (Vernal and
Santaquin, Utah; Ely and Caliente, Nevada)

MM Docket No. 01-323
RM-10337

To: The Commission

JOINT INITIAL COMMENTS OPPOSING PROPOSED REALLOTMENTS

UTAH TELEVISION STATIONS
KSL-TV, KUED(TV) and KULC(TV)
UTAH NON-COMMERCIAL
FM STATIONS KBYU-FM,
KCPW(FM), KPCW(FM), KOHS(FM),
KPGR(FM), KRCL(FM), KUER-FM,
KUSU-FM and KWCR-FM

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Utah television stations KSL-TV, KUED(TV) and KULC(TV), and Utah noncommercial/educational FM Stations KBYU-FM, KCPW(FM), KPCW(FM), KOHS(FM), KPGR(FM), KRCL(FM), KUER-FM, KUSU-FM and KWCR-FM (collectively, "the Joint Commenters"), pursuant to Section 1.415 of the Commission's rules, hereby file their joint comments on the Notice of Proposed Rulemaking ("*Notice*") issued in the above-captioned proceeding (DA 01-2736).

I. SUMMARY

The *Notice* solicits comments on the proposal for the reallocation of NTSC television channel 6 from Vernal to Santaquin, Utah ("*Santaquin Reallocation*"), dependent upon the simultaneous reallocation of NTSC television channel 6 from Ely to Caliente, Nevada ("*Caliente Reallocation*") (collectively, the "proposed reallocations"). The proposed reallocations, among other things, would result in the move of a Utah television station allotment approximately 120 miles across the state from Vernal to Santaquin, an area already well served by television stations in the more populous Salt Lake City/Provo area. The Joint Commenters strongly oppose the proposed reallocations on both procedural and substantive grounds.

Procedurally, the Commission should not have accepted the underlying Petition for Rulemaking as the Commission is no longer accepting rulemaking petitions that propose to amend the existing TV Table of Allotments to add new NTSC stations. The *Notice* itself is procedurally defective as it sets forth for comment a description of the proposed reallocations that contains significant factual discrepancies, while at the same time fails to solicit comment on other highly pertinent issues. Indeed, the underlying petition is deficient because the proponents have failed to provide all of the technical studies the Commission requires for evaluation of channel 6 proposals of this type. On substantive grounds, the Joint Commenters oppose the proposed reallocations because (a) they are inconsistent with the Commission's long-standing television allotment priorities, and (b) when all pertinent factors are examined in the context of evaluating whether the proposed reallocations are preferable to the current allotments, those factors weigh strongly against adopting the proposed allotments.

Specifically, adoption of the proposed reallocations would be inconsistent with the Commission's responsibility under Section 307(b) of the Communications Act ("the Act") to provide for a fair, efficient, and equitable distribution of broadcast services among the several states and communities.¹ Under standard comparative criteria employed by the Commission, the proposed reallocations are not preferable to the existing allotments. For example, contrary to long-standing television priority No. 1, the Commission's own data show that, under the proposed reallocations, not only would fewer Utah residents receive their first television reception service in comparison to the existing allotments, but fewer combined Utah and Nevada residents would receive their

¹ 47 U.S.C. § 307(b).

first television reception service. Although this priority No. 1 showing should be sufficient for the Commission to reject the proposed reallocations, retention of the existing allocations is further supported by television allocation priority No. 5. As noted above, the proposal seeks to move a Utah television station allocation approximately 120 miles across the state from Vernal to Santaquin, even though Santaquin is already well served by thirteen television stations in the Salt Lake City/Provo area, while Vernal does not currently receive a single grade B signal. The *Santaquin Reallocation* should also be barred because it will remove the only local transmission service from Vernal. Nor should the allocation to Santaquin be afforded credit as a first local transmission service.

Moreover, adoption of the proposed reallocations will result in interference to the signal of television station KSL-TV, resulting in a loss of KSL-TV service to thousands of people in an 836 square kilometer area. As the attached technical report indicates, the proposed reallocations also pose interference concerns to the numerous noncommercial/educational (“NCE”) FM stations in the Salt Lake City/Provo area. Indeed, these NCE FM stations (including those licensed to the Joint Commenters) would be “boxed in” by a channel 6 reallocation to Santaquin, precluded (by their responsibility not to interfere with an authorized channel 6) from making necessary modifications or desired enhancements to their FM facilities and services.

Significantly, the underlying petition and the *Notice* fail to recognize that this is not only an NTSC allocation proceeding. The channel 6 allocations involved here do *not* have a digital pair and will be used for digital service. The petition and *Notice* do not, as required, address the technical ramifications of such DTV channel 6 operations in either Santaquin or Caliente, in conflict with the Commission’s clearly expressed preference to

avoid allotting channel 6 for DTV unless absolutely necessary. For the reasons set forth above and as demonstrated below, the Joint Commenters, respectfully submit that the proposed reallocations be rejected.

II. BACKGROUND

TV 6, L.L.C. ("TV6"), one of the two petitioners in the current proceeding, currently holds a construction permit (FCC File No. BPCT-19960919KG) to construct the KBCJ(TV) facility on channel 6, at a site east of Vernal, Utah at an ERP of 83.2 kW. This permit was granted by the Commission on December 19, 1997. As of yet, TV6 has chosen not to construct the facilities authorized in the permit. As described below, if not for the tolling of the expiration of this permit by the FCC, the permit would have expired on December 19, 2000.

Kaleidescope Foundation, Inc. ("KFI"), the second of the two petitioners in the current proceeding, currently holds a construction permit (FCC File No. BPET-19970331LN) to construct the KBNY(TV) facility on channel 6 at a site northwest of Ely, Nevada at an ERP of 100kW. This permit was granted by the Commission on April 9, 1999. The facilities authorized therein have not been built. This permit expires April 9, 2002.

On April 27, 2000, TV6 and Kaleidescope jointly filed a Petition for Rulemaking, that proposes (a) to reallocate NTSC channel 6 from Vernal to Santaquin (just south of Provo) and to modify the existing construction permit to specify Santaquin as the community of license, and (b) to reallocate NTSC channel 6 from Ely to Caliente and to modify the existing construction permit to specify Caliente as the community of license.

On October 4, 2000, TV6 filed an application (FCC File No. BMPCT-20001004AEE) to modify its existing construction permit. The application requests

authority to move the transmitter site west of Vernal, to decrease the overall antenna height, and to decrease the authorized ERP. This application remains pending at the FCC.

Eleven days before the expiration of its construction permit, on December 6, 2000, TV6 filed a letter requesting that the expiration of the permit be tolled, pending resolution of its petition for rulemaking to move to Santaquin. On July 10, 2001, the Chief of the Video Services Division issued a letter tolling the expiration of the original permit (FCC File No. BPCT-19960919KG) “pending resolution of the outstanding rulemaking petition” to move channel 6 to Santaquin.

On November 14, 2001, the Commission released the instant *Notice* soliciting comments on the proposed reallocation of channel 6 from Vernal to Santaquin. The *Notice* also proposes the reallocation of NTSC channel 6 from Ely to Caliente and indicates that the TV6 proposal to move channel 6 to Santaquin is dependent upon the Caliente reallocation. The Commission in the *Notice* did *not* propose to modify the existing TV6 or Kaleidoscope construction permits to change their communities of license.

The *Notice* appears to contain significant factual errors with respect to the status of facilities proposed on channel 17 in Vernal, Utah as well as the existing allocations in Ely, Nevada. In paragraph 5 of the *Notice* the Commission erroneously states that the petitioners had claimed, “Vernal will not be left without a transmission service, once construction of KBJN-TV, NTSC channel *17, is completed (BPET-960705KJ).” According to the Commission’s CDBS database, however, there is no KBJN-TV in Vernal (KBJN-TV is actually in Ely), and the Commission has not authorized the

construction of a full power television station on channel 17 in Vernal. Instead, there is an application for an initial construction permit to operate a full power television station on channel 17 in Vernal which was tendered for filing over five years ago on July 5, 1996; but, this application has yet to be accepted for filing. Additionally, paragraph 11 of the *Notice* fails to include the channel 3 allotment in Ely, Nevada for which a license application filed by KBJN-TV is pending.

III. THE PROPOSED RULEMAKING SHOULD NOT HAVE BEEN ACCEPTED BY THE COMMISSION

This rulemaking proceeding should not have been initiated and should now be terminated because the Commission should not have accepted the underlying petition for proposed rulemaking. In May 1996, the Commission stated:

Consistent with our decision to stop accepting applications for new NTSC stations, **we also will not accept petitions for rule making proposing to amend the existing TV Table of Allotments in Section 73.606(b) of our rules to add an allotment for a new NTSC station.** Other petitions to amend the TV Table of Allotments (for example, proposing to change a station's community of license or altering the channel on which it operates, including changes in which channel allotment in a community is reserved for noncommercial educational use) can continue to be filed, but any such changes to the table that include a modification of a station's authorization will be conditioned on the outcome of this DTV rule making proceeding. This termination of the opportunity to file petitions to add NTSC allotments for new stations is effective as of the close of business on the date of adoption of this Further Notice.²

As described previously, the proposed move of channel 6 from Vernal, Utah 120 miles to the west to Santaquin (filed April 27, 2000) is more than a simple change in a station's community of license. It is tantamount to a new channel allotment to a different

² *Advanced Television Systems and Their Impact Upon the Existing Television Broadcast Service*, MM Docket No. 87-268, *Sixth Further Notice of Proposed Rulemaking* ("DTV Sixth Further Notice"), 11 FCC Rcd 10968, 10992-93 (1996).

region. Significantly, the Commission did not propose modifying the existing construction permit for Vernal and, instead, *only* solicited comments on the allotment scheme.³

Because the proposed channel move essentially is a new allotment and because no modification of the Vernal construction permit is being proposed by the Commission, initiation of this rulemaking contravenes the Commission's above-stated policy terminating the opportunity to prosecute petitions to add NTSC allotments for new stations. The Commission, therefore, should dismiss the Petition for Proposed Rule Making and terminate this proceeding.

IV. EVEN IF THE COMMISSION DETERMINES THE FILING OF THE PETITION WAS PROPER, THE PROPOSAL SHOULD BE REJECTED AS INCONSISTENT WITH THE COMMISSION'S LONG-STANDING TELEVISION ALLOTMENT PRIORITIES

The Commission established the following television allotment priorities fifty years ago in the *Sixth Report and Order on Television Allocations*: (1) provide at least one television reception service to all parts of the United States; (2) provide each community with at least one television broadcast station; (3) provide a choice of at least two television reception services to all parts of the United States; (4) provide each community with at least two television broadcast stations; and (5) assign any remaining channels to communities based on population, geographic location, and the number of television reception services available to the community from stations located in other communities.⁴

³ The Commission should not have proposed modifying the construction permit, as the facilities authorized in the permit cannot serve any part of Santaquin.

⁴ *Amendment of the Commission's Rules and Regulations and Engineering Standards Concerning the Television Broadcast Service*, Docket No. 9175, *Sixth Report and Order* ("TV Allotment Priorities Order"), 41 FCC 148, 167 (1952).

When considering reallocation proposals, the Commission compares the proposed allocation plan to the existing state of allocations and amends the allocation table *only if* the proposal will result in a net benefit for the communities involved.⁵ The Commission should reject the proposed reallocations as inconsistent with its long-standing television allocation priorities inasmuch as no net benefit consistent with the Commission's priorities can be found here.

As stated above, the Commission's first priority in evaluating reallocation proposals is to provide at least one television (reception) service to all parts of the United States. The independent study undertaken by the Commission staff, however, demonstrates the petitioners' reallocation proposals will result in net losses in areas that currently receive no service ("white areas") when compared to the existing allocations.⁶

Specifically, the Commission's staff engineering study finds that the *Santaquin Reallocation* would result in fewer Utah residents receiving first television reception service. The *Santaquin Reallocation* would provide first service to a white area near Santaquin that is populated by 9,501 persons while removing the only local television reception service to almost twice as many people (18,345 persons) in the Vernal area. The *Santaquin Reallocation* alone, therefore, results in a net loss of first television reception services to 8,884 persons in Utah. Even when considered together with the modest white area gains in Nevada of 1180 persons as contemplated by the *Caliente Reallocation*, adoption of petitioners' proposed reallocations still would result in 7,664

⁵ See *Amendment of the Commission's Rules Regarding Modification of FM and TV Authorizations to Specify a New Community of License Modification of FM and TV Authorizations to Specify a New Community of License*, MM Docket No. 88-526, *Report and Order* ("Change of Community R&O"), 4 FCC Rcd 4870 (1989), *recon. granted in part* ("Change of Community MO&O"), 5 FCC Rcd 7094 (1990).

⁶ Notice at ¶¶ 6-8.

fewer persons receiving a first television reception service in Utah and Nevada combined, as compared to the existing allotments. Thus, a white area analysis supports retention of the existing allotments.

In addition, the petitioners are not persuasive in their claim of a priority No. 2 for a first local television transmission service in Santaquin. Petitioners ignore the fact that television is a regional service, not a local service.⁷ Given the substantial migration proposed here from the eastern region of the State to the western region, Santaquin should be considered part of the Salt Lake/Provo area which has numerous other local television transmission services. In this context, crediting Santaquin with a first local transmission service elevates form over substance.⁸

Nor are petitioners persuasive in their claim that the *Santaquin Reallotment* does not violate the Commission's prohibition in its *Change of Community MO&O*, by depriving Vernal of its only local transmission service.⁹ As the Commission has consistently stated:

It has never been Commission policy to adhere rigidly to the concept of localism if the result of that adherence is to undermine the fair, equitable, and efficient distribution of radio service mandated by Section 307(b) of the Communications Act. We have consistently given little or no weight to claimed first local service preferences if, given the facts and circumstances, the grant of a preference would appear to allow an artificial or purely technical manipulation of the Commission's 307(b) related policies.¹⁰

⁷ See Note 18 *supra*; *Cleveland Television Corporation*, 91 FCC 2d 1129, 1137 (Rev. Bd 1981).

⁸ Even were petitioners to be afforded a first local television service priority, it is well established that the Commission does not apply such preference blindly. *Change of Community MO&O*, 5 FCC Rcd at 7096 ¶13. In any event, first television reception is a higher priority than a first local service. *Id.* at ¶17.

⁹ *Change of Community MO&O*, 5 FCC Rcd at 7096

¹⁰ *Id.* (footnote omitted).

Here petitioners' arguments constitute a purely technical manipulation of the rules and should not be credited. The technicality employed is their assertion that the *Santaquin Reallotment* does not violate the Commission's prohibition against the removal of an existing station representing a community's sole local transmission service because the Vernal station is not built. In fact, the Vernal station was scheduled to be built by December 19, 2000, but for TV 6's filing of the instant Petition for Rulemaking and its eleventh hour request to toll the expiration date of the construction permit.¹¹ Such bootstrapping cannot be permitted and petitioners should not be allowed to deprive Vernal of its sole authorized transmission service.¹²

Moreover, retaining the allotments as they stand today would be consistent with Section 307(b) of the Communications Act and television allotment priority No. 5. Section 307(b) requires the Commission "to provide a fair, efficient, and equitable distribution of radio services "among the several States and communities."¹³ Priority No. 5 explicitly requires the Commission in allotting television channels to communities to take into account "the number of television services available to such community from television stations located in other communities."¹⁴

¹¹ The petitioners admit as much in their petition. Petition for Rulemaking at 8.

¹² At the same time as TV 6 relies on the unbuilt status of its own station (and its own delaying tactics) to avoid the Commission's prohibition, it relies upon the existence of the television allotment for channel 17 in Vernal to support its claim that it is not removing the community's only transmission service. According to the Commission's CDBS database, however, an application has been pending for that allotment for over five years and has never been accepted for filing. *See supra* note 2 and accompanying text. Not only is it unlikely to ever be on the air, but also the Commission will *not* accept any new applications for the channel 17 allotment in Vernal, if it becomes vacant. *See DTV Sixth Further Notice*, 11 FCC Rcd at 10992 ("Consistent with our proposal to eliminate all existing vacant allotments, we will not accept additional applications for new NTSC stations...."). The Commission decision discussed above, not to accept any more rulemaking petitions for new NTSC channels also negates petitioners' claim at page 3 of their petition that additional channels are available for NTSC allotments to Vernal and Ely.

¹³ 47 U.S.C. § 307(b)

¹⁴ *TV Allotment Priorities Order*, 41 FCC at 167.

In adopting the priorities fifty years ago, the Commission stated that it “did not believe that large cities should receive an undue share of the relatively scarce VHF[TV] channels.”¹⁵ The Commission further stated that it attempted “to provide at least some VHF channels to all [regions] even though in some cases an assignment might otherwise have been made to a large metropolitan center in an adjacent [region].”¹⁶

In the case at hand, thirteen authorized stations (licensed or under construction permit) provide a Grade B or better contour at Santaquin (which is near the more populous Provo/Salt Lake City area). In contrast, no operating station provides a Grade B contour at Vernal, Utah.

Depriving Vernal of its channel 6 allotment is especially egregious in this case when the shift is clear across the state, approximately 120 miles. Neither the *Notice* nor the petitioners cite precedent for a geographical shift of such magnitude to a more urbanized well-served region and abandonment of an unserved area of the state.¹⁷ This factor alone should be sufficient to reject the proposed reallocations.¹⁸ In sum, Section 307(b) as well as the Commission’s long-standing television allotment policies demonstrate that the proposed reallocations are not preferable to the existing allotments.

¹⁵ *Id.* at 168.

¹⁶ *Id.* at 169.

¹⁷ It has been a long-standing practice when the Commission is comparing existing and proposed allotments for the Commission to consider, under Section 307(b), the location of the proposed allotment with respect to other communities, and the availability of other services in the communities affected by the proposed change. “[Under] these circumstances, it is proper for the Commission to consider whether the proposal would result in the shifting of service from an underserved rural to a well-served urban area....” *Change of Community MO&O*, 5 FCC Rcd at 7096 ¶12. This is particularly true respecting television, which is considered a regional service. *Change of Community R&O*, 4 FCC Rcd at 4876 n.8.

¹⁸ “The Commission’s duty...[under Section 307(b)] is to prevent] excessive concentration of [broadcast] assignments in larger cities and ensure adequate service to smaller communities and ‘sparsely populated’ regions.” *Communications Investment Corp. v. FCC*, 641 F.2d 954, 963-64 (DC Cir. 1981).

V. THE INTERFERENCE ISSUES RAISED BY THE PROPOSAL DEMONSTRATE THAT THE PROPOSED REALLOTMENTS ARE NOT PREFERABLE TO THE EXISTING ALLOTMENTS

Attached as Appendix A to these joint comments is a technical report prepared by consulting engineer Louis Libin of Broad Comm, Inc. regarding the *Santaquin Reallotment* (“the Libin report”). The Libin report concludes that although the proposed *Santaquin* move technically satisfies the spacing requirements under the FCC’s rules, the move will have an adverse impact on KSL-TV and numerous NCE (“NCE”) FM stations. Specifically, a Longley-Rice analysis shows that the proposed analog channel 6 facility in Santaquin will cause interference to KSL resulting in a loss of service to thousands of viewers and hundreds of square kilometers. Additionally, the Libin report indicates that the proposed analog channel 6 in Santaquin will *receive* interference from several NCE FM stations and similarly will *cause* interference to these existing NCE FM stations.

Finally, the Libin report notes that the proposed Provo/Salt Lake City move will have another significant long-term, adverse impact on the numerous NCE FM stations in the area. In the event that existing NCE FM stations, within the distances from channel 6 specified in Section 73.525(a) of the Commission’s rules, were to make changes in their operating facilities or locations, they must comply with the restrictions of that section intended to protect an existing channel 6. Thus, the proposed Santaquin reallotment would “box in” numerous NCE FM stations and confine them to their current facilities and locations, thereby precluding them from making required or necessary modifications (for example, if the station lost its transmitter site) or from pursuing enhancements to their existing facilities and transmitter locations.

The issues described above and in the Libin report demonstrate that a channel 6 allotment to Santaquin is extremely problematic. Moreover, they certainly add weight to

the conclusion that the proposed reallocations do not better serve the public interest than retention of the existing allotment scheme.

VI. THE PROPOSED REALLOCATIONS FAIL TO CONSIDER IMPORTANT DTV CHANNEL 6 INTERFERENCE ISSUES AND THE COMMISSION'S EXPRESS POLICY TO AVOID USING CHANNEL 6 FOR DTV

The Petition for Rulemaking and the *Notice* analyze the proposed reallocations considering only the comparative merits of an analog-to-analog reallocation. They ignore the critical fact that the channel 6 allotments at issue here have no digital pair and can initiate service with digital operations or convert from analog to digital on channel 6 at any time. Moreover, they must convert to DTV on channel 6 by the end of the DTV transition period.¹⁹ Therefore, any comparative analysis between the relative merits of maintaining the existing allotments or adopting the petitioners' proposed allotments must consider the impact of new digital operations on channel 6 in both the Santaquin and Caliente communities. The petitioners' proposals are fatally deficient in this regard.

Specifically, the petitioners' proposed channel 6 digital allotment in the Salt Lake/Provo area is plainly inconsistent with the Commission's policy of avoiding the use of channel 6 for DTV purposes. Because of the recognized potential for interference to NCE FM licensees from digital operation on channel 6, from the very beginning of its DTV proceeding the Commission proposed to utilize digital allotments on channel 6 "only where there is no other readily available allotment opportunity that would meet the

¹⁹ *Advanced Television Systems and Their Impact upon the Existing Television Broadcast Service*, MM Docket No. 87-268, *Memorandum Opinion and Order on Reconsideration of the Fifth Report and Order*, 13 FCC Rcd 6860, 6865 (1998) ("We shall afford new NTSC permittees, whose applications were not granted on or before April 3, 1997 and who were therefore not eligible for an initial DTV paired license, the choice to immediately construct either an analog or a digital station on the channel they were granted. They will not be awarded a second channel to convert to DTV but may convert on their single 6 MHz channel.").

minimum spacing requirements.”²⁰ Its adherence to this policy throughout the DTV transition has been unwavering.²¹ In point of fact, only three digital channel 6 allotments were placed in the DTV table of allotments across the entire country.²² This is certainly not a proceeding in which the Commission should take the opportunity to move a fourth to an area with many non-commercial stations.

In this regard, as the attached Libin report demonstrates, there are numerous NCE FM stations within or overlapping the Grade B contour of the proposed new channel 6 allotment in Santaquin. This raises serious interference concerns with respect to any proposed digital channel 6 operation at Santaquin. It should also weigh heavily in any consideration of whether the proposed reallocations are to be preferred over the existing allotment scheme.

Moreover, petitioners’ failure to even address the potential interference that channel 6 digital allotments may have to the NCE FM licensees in their Petition for Rulemaking is an independent reason to dismiss their proposals. In 1998, the Commission decided that any proposals to operate digitally on channel 6 must include engineering studies demonstrating non-interference to existing NCE FM stations.²³ This

²⁰ *Advanced Television Systems and Their Impact upon the Existing Television Broadcast Service*, MM Docket No. 87-268, *Second Further Notice of Proposed Rulemaking*, 7 FCC Rcd 5376, 5384 (1992)

²¹ *Advanced Television Systems and Their Impact Upon the Existing Television Broadcast Service*, MM Docket No. 87-268, *Sixth Report and Order*, 12 FCC Rcd 14588, ¶151 (1997) (“[W]e have developed the DTV Table...and have minimized the use of channel 6, so that the new DTV Table contains only two allotments on channel 6.”); *Advanced Television Systems and Their Impact Upon the Existing Television Broadcast Service*, MM Docket No. 87-268, *Memorandum Opinion and Order on Reconsideration of the Sixth Report and Order* (“*Allotment Reconsideration Order*”), 13 FCC Rcd 7418, 7437 (1998) (“[W]e have sought to minimize the potential for interference between DTV and FM radio service by avoiding the use of channel 6 for DTV whenever possible.”).

²² 47 C.F.R. 73.622(b).

²³ See *Allotment Reconsideration Order*, 13 FCC Rcd at 7437 (“We therefore will require parties requesting new DTV allotments on channel 6 to submit an engineering study to demonstrate that no interference would be caused to existing FM radio stations on FM channel 200-220”).

rule was codified and in existence prior to the submission of the instant Petition for Rulemaking.²⁴ Petitioners have submitted no such study. Neither does the *Notice* address this issue.

Because neither the petitioners nor the *Notice* recognize or address the DTV channel 6 ramifications presented in the instant proceeding, the Joint Commenters submit that the proposed reallocations are not even ripe for consideration.²⁵ If the Commission declines to reject the proposed allotments summarily for their inconsistency with the television allotment priorities, at a minimum, it should (a) require that the petitioners submit the required channel 6 DTV studies for both Santaquin and Caliente, and (b) issue a new *Notice*²⁶ that considers, and presents for public comment, the channel 6 DTV issues set forth herein.²⁷

²⁴ 47 C.F.R. 73.623(f); *See Advanced Television Systems and Their Impact Upon the Existing Television Broadcast Service*, MM Docket No. 87-268, *Second Memorandum Opinion and Order on Reconsideration of the Fifth and Sixth Report and Orders*, 14 FCC Rcd 1348, 1374 n.66 (1998).

²⁵ Similarly, the Petition for Rulemaking is deficient in its failure to comply with the Commission's directive that "petitioners who are permittees or have been licensees for less than one year should state in their petitions [to change communities] whether they obtained a construction permit in a competitive hearing and, if so, whether the petitioner sought [a comparative credit for the very same community the petitioner proposes to leave]." *Change of Community MO&O*, 5 FCC Rcd at 7095.

²⁶ Moreover, any such new *Notice* should also correct the factual discrepancies noted in Section II of these comments and provide an opportunity for comments on those corrected circumstances.

²⁷ In the unlikely event that the Commission adopts the petitioners' proposed reallocations without fully considering the DTV implications, any Commission *Order* must reflect the Commission's policy of conditioning DTV channel 6 allotments upon the requirement that any interference caused to existing NCE FM licensees must be cured by the DTV licensee. *See Allotment Reconsideration Order*, 13 FCC Rcd at 7437 ("It will be the initial responsibility of a DTV licensee to protect against or eliminate harmful interference to any FM stations that are in operation at the time the DTV station commences operation.").

VII. IN THE EVENT THE COMMISSION ADOPTS THE PROPOSED REALLOTMENTS – WHICH IT SHOULD NOT DO – IT MUST OPEN A FILING WINDOW TO ALLOW OTHER PARTIES TO COMPETE IN AN AUCTION FOR THE NEW ALLOTMENTS

As noted in Section III, the Commission's *Notice* only solicits comments concerning the public interest in amending the table of allotments. In contrast to more typical reallocation rulemaking proposals, the Commission did *not* in this instance propose modification to the petitioners' construction permits.

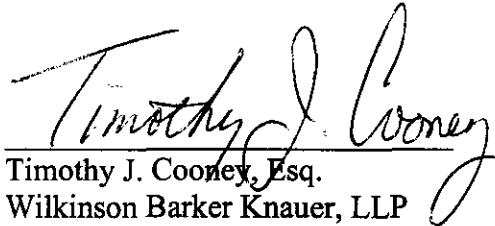
Thus, if the Commission determines that a channel 6 allotment should be made to Santaquin in this proceeding it must be treated as a new allotment and any interested parties, including TV6, should be given the opportunity to file for such allotment in an auction window. In addition, any Commission action in this proceeding allotting channel 6 to Santaquin would eliminate the channel 6 allotment at Vernal. The elimination of the Vernal allotment would require that the Commission no longer toll the TV6 construction permit and, instead, cancel the permit.

VIII. CONCLUSION

Given the myriad of problems and deficiencies associated with the proposed reallocations, it is hard to find any justification for going forward with the instant rulemaking. For the foregoing reasons, the Commission should reject the proposed reallocations.

Respectfully submitted,

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KOHS(FM)
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Alpine School District
Kenneth Seastrand, Station Manager

KPGR(FM)
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John Greene, General Manager

KUSU-FM
Utah Public Radio
Utah State University
Richard Meng, General Manager

KWCR-FM
Weber State College
Weber State University
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**Before the
Federal Communications Commission
Washington, DC 20554**

**MM Docket No. 01-323
Evaluation of the Impact on
Salt Lake City / Provo, UT Area TV / FM Stations
From Proposed Move of TV Channel 6 from
Vernal, UT to Santaquin, UT
January 14 2002**

On November 14, 2001 the FCC adopted a Notice of Proposed Rulemaking (NPRM) (MM Docket No. 01-323 RM-10337) that proposes to amend the TV Table of Allotments. The proposed amendment would move the allotment for channel 6 Vernal, UT to Santaquin, UT and channel 6 Ely, NV to Caliente, NV. This report will address the effect of the move from Vernal to Santaquin on the existing TV and FM environment in the area surrounding Santaquin, UT.

Santaquin, UT is located just south of the Salt Lake City / Provo, UT area. The geographic coordinates for the proposed channel 6 as listed in the NPRM are 39-43-58 North Latitude and 111-56-34 West Longitude. In this area are a number of non-commercial educational (NCE) FM stations and FM translators as well as numerous full power television stations, including NTSC channel 5 TV station KSL Salt Lake City, UT.

Although the proposed Santaquin location meets the spacing requirements to the adjacent channel 5 in Salt Lake City, it will have adverse impact on KSL and NCE FM stations. Using the station parameters listed in the NPRM for the proposed channel 6 and those in the FCC database for KSL, an FCC OET Bulletin 69 Longley-Rice analysis was performed to determine the extent of any predicted interference to KSL. The results of the analysis indicate the proposed channel 6 facility would cause interference resulting in a loss of service from KSL to 11,052 people and 836 square km. A breakdown by state/county of the service loss is provided as an attachment to this report as well as plots showing the effect of the interference.

Since KSL has not yet made a decision on its final DTV channel, a further evaluation would need to be made to determine the impact if KSL were to use channel 5 as its DTV channel with the proposed channel 6 also transitioning to DTV. The analysis also would depend upon how the FCC will calculate two percent de minimis interference standard if a station chooses to use its NTSC channel for DTV and upon whether each station maximized its

facilities. A preliminary evaluation based on an OET Bulletin 69 Longley-Rice analysis, however, shows that proposed channel 6 DTV would cause some interference to KSL channel 5 DTV. A breakdown by state/county showing this service loss is also provided as an attachment to this report as well as plots showing the effect of the interference.

Based on the tables in FCC Rules Sections 73.525(a) and 74.1205(a), 10 full service NCE FM stations and 31 NCE FM translators are located within the distance where they would be considered to have an effect on the proposed channel 6. A further evaluation indicates that 8 of the 10 full service stations either have interference contours that overlap or are actually inside the grade B contour of the proposed channel 6. In addition, 18 of the 31 translators noted above are within the grade B contour of the proposed channel 6.

An evaluation of the predicted interference from the 8 full service FM stations noted above to the proposed channel 6 was made based on the criteria set forth in the FCC Rules. The resulting predicted interference areas are shown in the plots attached to this report.¹

Full Service FM Stations within 73.525(a) Distance²

KPGR	PLEASANT GROVE	UT	Channel 201	Inside Ch 6 Grade B
KWCR	OGDEN	UT	Channel 201	No contour overlap
KCPW	SALT LAKE CITY	UT	Channel 202	Contour overlap
KBYU	PROVO	UT	Channel 206	Contour overlap
KAGJ	EPHRAIM	UT	Channel 208	Inside Ch 6 Grade B
KUER	SALT LAKE CITY	UT	Channel 211	Contour overlap
KRCL	SALT LAKE CITY	UT	Channel 215	Contour overlap
KOHS	OREM	UT	Channel 219	Inside Ch 6 Grade B
KUFR	SALT LAKE CITY	UT	Channel 219	No contour overlap
KPCW	PARK CITY	UT	Channel 220	Contour overlap

It is noted that the FCC Rules do not require an authorized full service FM station to make any changes to provide protection to a new channel 6 TV station. However, if any full service FM station within the distance listed in Section 73.525(a) proposes to make a change, then the FM station would be required to comply with the FCC Rules concerning any new interference to an authorized channel 6. In effect, the existing 8 FM stations with overlapping interference contours could be precluded from making any required modifications (for example, due to the loss of a transmitter site) or beneficial enhancements to their facilities.

To evaluate the potential interference that would be caused to FM stations from TV channel 6, an evaluation was made using the same criteria that is

¹ One of the 8 stations (KPCW Channel 220 Park City, UT) is predicted to cause so little interference to the proposed channel 6 that it was not visible in the plot and therefore was not included in the attachments.

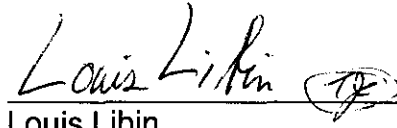
² List obtained from FCC database

applied in evaluating interference that would be caused by FM stations to TV channel 6. Plots showing a potential worst case scenario are provided as attachments to this report. It is noted that of the 10 full service stations evaluated 5 are predicted to receive interference based on the use of this criteria.

Finally, a review of Grade B television station contours shows that thirteen television stations in the Salt Lake City/Provo areas (licensed or under construction permit) provide a Grade B or better contour at Santaquin, Utah³, while no operating television station provides a Grade B contour at Vernal, Utah.

I declare under penalty of perjury that the foregoing statements and the attached exhibits were prepared by me or under my immediate supervision and are true and correct to the best of my knowledge and belief.

January 14, 2002



Louis Libin
President
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³ KUTV Channel 2 Salt Lake City, Utah; KTVX Channel 4 Salt Lake City, Utah; KSL Channel 5 Salt Lake City, Utah; KUED Channel 7 Salt Lake City, Utah; KULC Channel 9 Ogden, Utah; KBYU Channel 11 Provo, Utah; KSTU Channel 13 Salt Lake City, Utah; KJZZ Channel 14 Salt Lake City, Utah; KUPX Channel 16 Provo, Utah; KTMW Channel 20 Salt Lake City, Utah; KAZG Channel 24, Ogden, Utah; KUWB Channel 30 Ogden, Utah; New CP (FCC ARN BPCT-19960404KX) with no call, sign channel 32, Provo, Utah.


CERTIFICATE OF SERVICE

I, Paula M. Lewis, hereby certify that on this 14th day of January, 2002, a copy of the foregoing document was served upon the parties listed below via hand delivery and U.S. mail, postage prepaid.

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Federal Communications Commission
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John A. Karousos*
Chief, Allocations Branch
Policy and Rules Division
Mass Media Bureau
Federal Communications Commission
445 – 12th Street, S.W.
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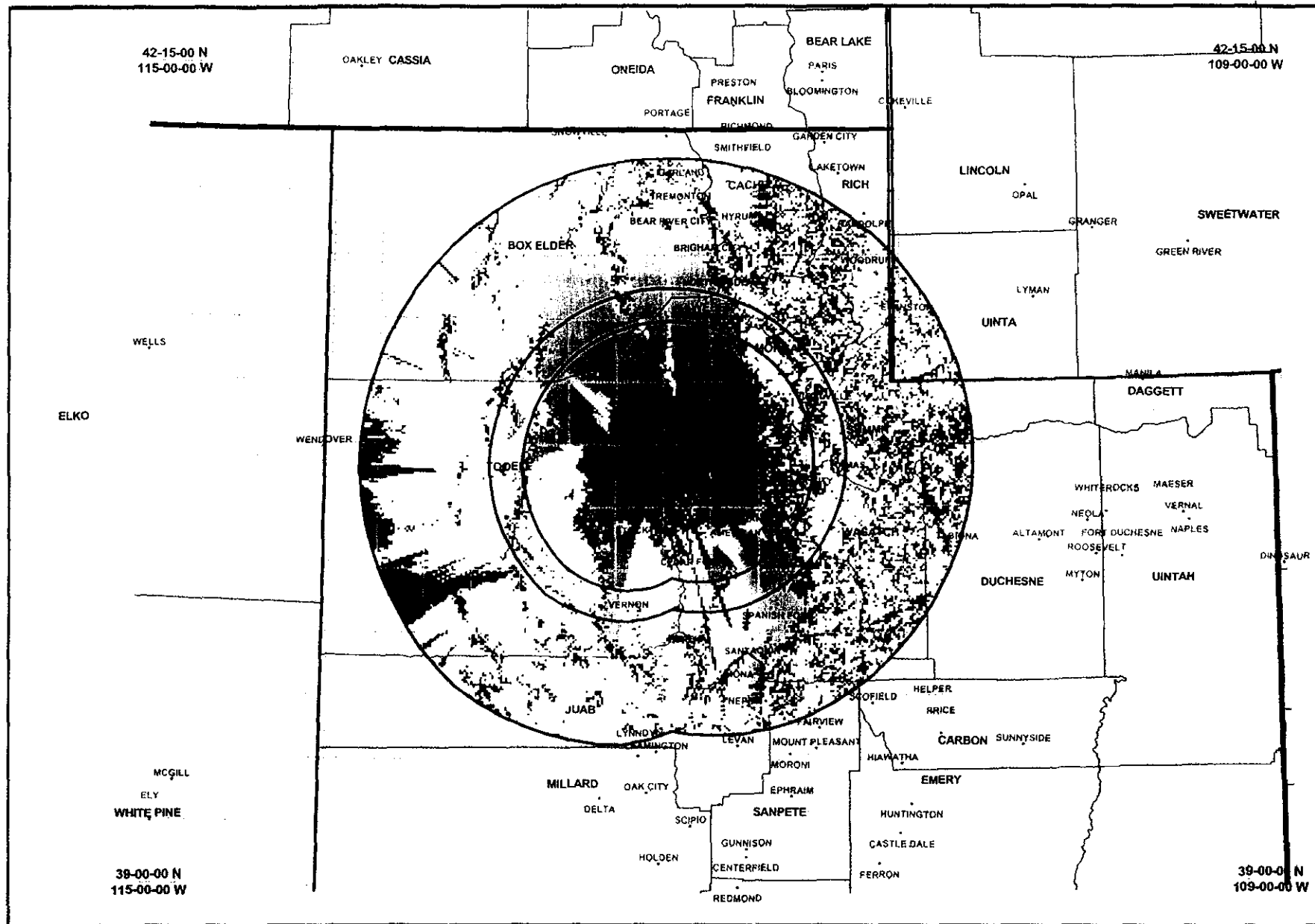


Paula M. Lewis

* Party served by hand delivery.

Service Comparison
KSL NTSC Channel 5
Channel 6 at Vernal, UT vs Channel 6 at Santaquin, UT

State	County	With Channel 6 at Vernal, UT		With Channel 6 at Santaquin, UT		Change in Service	
		Population	Households	Population	Households	Population	Households
UTAH	BOX ELDER	34,865	11,238	34,865	11,238	0	0
UTAH	CACHE	40,230	12,672	40,230	12,672	0	0
UTAH	DAVIS	187,941	55,748	187,941	55,748	0	0
UTAH	DUCHESNE	108	205	108	205	0	0
UTAH	JUAB	5,122	1,927	768	389	-4,354	-1,538
UTAH	MORGAN	5,459	1,656	5,459	1,656	0	0
UTAH	RICH	97	33	97	33	0	0
UTAH	SALT LAKE	725,956	257,166	725,956	257,166	0	0
UTAH	SUMMIT	15,261	10,234	15,261	10,234	0	0
UTAH	TOOELE	24,995	8,916	24,995	8,916	0	0
UTAH	UTAH	263,222	72,663	256,524	70,913	-6,698	-1,750
UTAH	WASATCH	8,485	3,363	8,485	3,363	0	0
UTAH	WEBER	157,910	57,667	157,910	57,667	0	0
WYOMING	UINTA	11,480	4,508	11,480	4,508	0	0
Total		1,481,131	497,996	1,470,079	494,708	-11,052	-3,288



KSL NTSC Channel 5 Service
Based on FCC OET 69 Prediction
with
Channel 6 at Vernal, UT

KSL-TV SALT LAKE CITY UT NTSC Channel 05
Interference: NTSC = RED DTV = BLUE

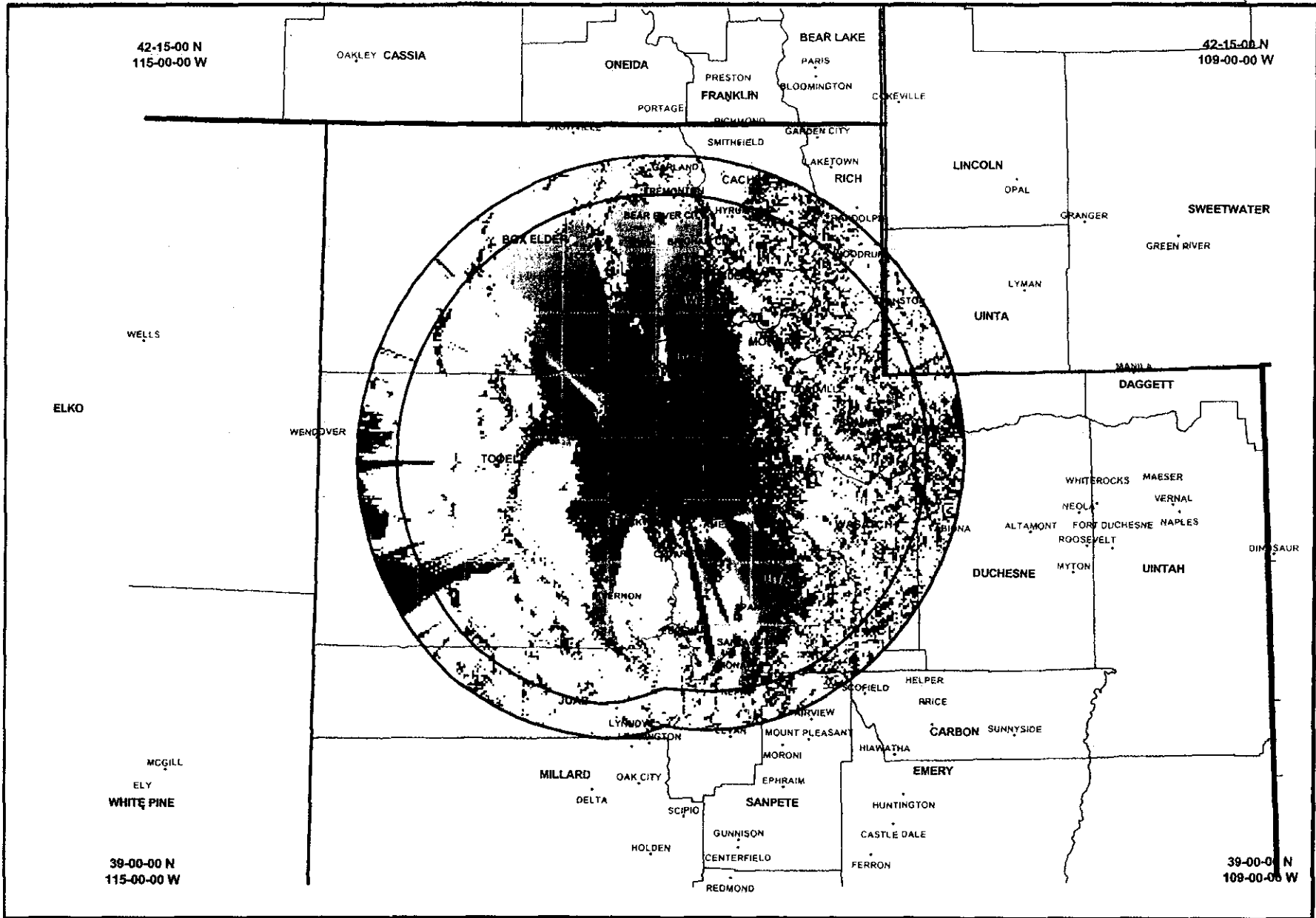


129.92 dBu 88.46 dBu 47 dBu (Grade B Contour)
Predicted Longley-Rice Field

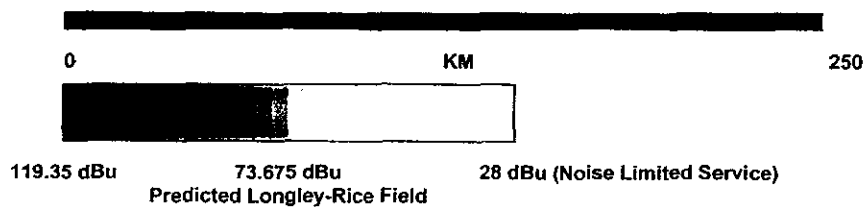
Service Comparison
KSL (as DTV) Channel 5
Channel 6 (as DTV) at Vernal, UT vs Channel 6 (as DTV) at Santaquin, UT

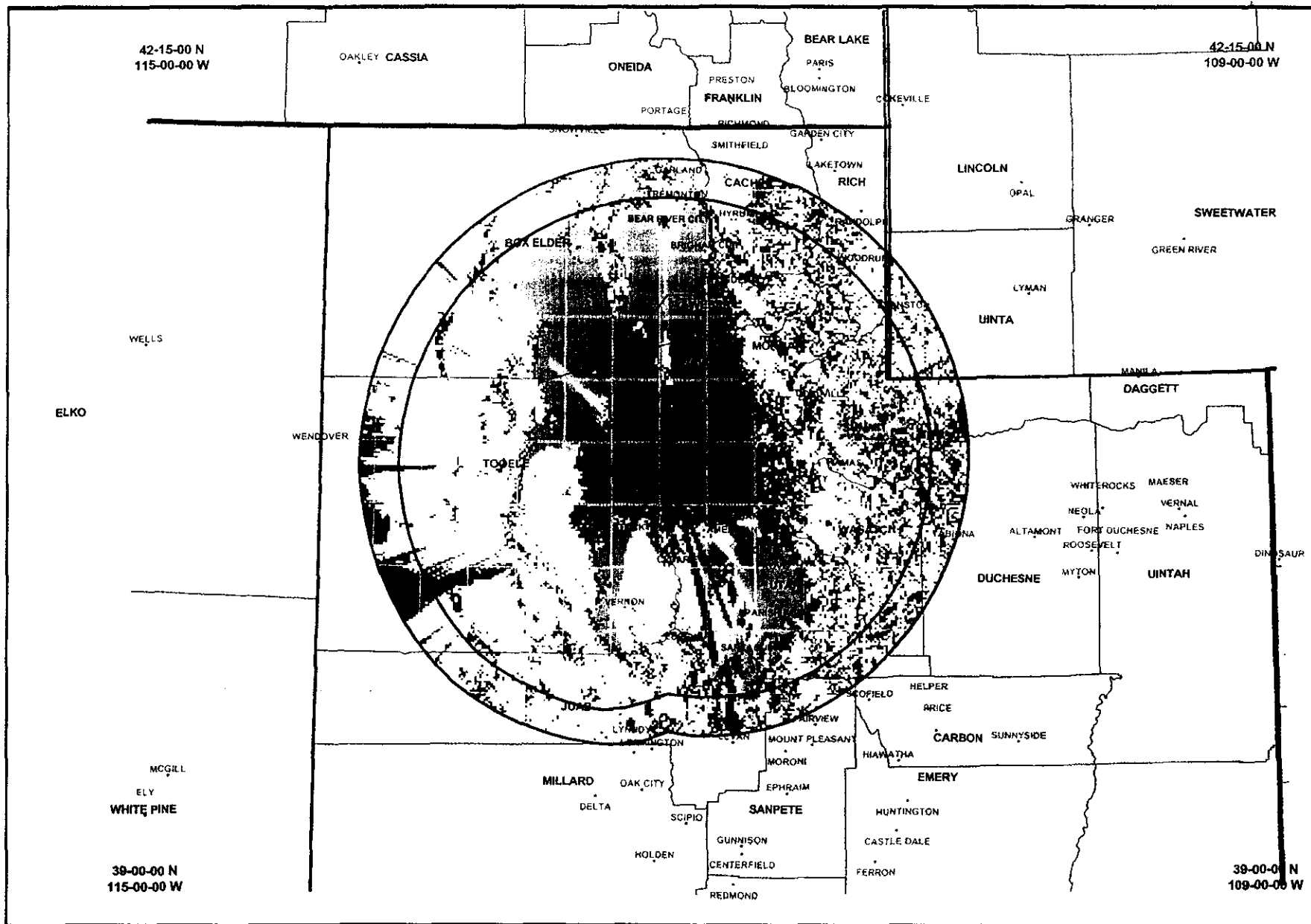
State	County	With Channel 6 at Vernal, UT		With Channel 6 at Santaquin, UT		Change in Service	
		Population	Households	Population	Households	Population	Households
UTAH	BOX ELDER	34,714	11,173	34,714	11,173	0	0
UTAH	CACHE	57,518	18,242	57,518	18,242	0	0
UTAH	DAVIS	187,941	55,748	187,941	55,748	0	0
UTAH	DUCHESNE	117	217	117	217	0	0
UTAH	JUAB	4,742	1,686	4,627	1,653	-115	-33
UTAH	MORGAN	5,528	1,674	5,528	1,674	0	0
UTAH	RICH	234	92	234	92	0	0
UTAH	SALT LAKE	725,956	257,166	725,956	257,166	0	0
UTAH	SANPETE	16	9	16	9	0	0
UTAH	SUMMIT	15,489	10,362	15,489	10,362	0	0
UTAH	TOOELE	25,035	8,934	25,035	8,934	0	0
UTAH	UTAH	263,410	72,711	261,398	72,150	-2,012	-561
UTAH	WASATCH	10,081	3,989	10,081	3,989	0	0
UTAH	WEBER	158,288	57,776	158,288	57,776	0	0
WYOMING	UINTA	10,609	4,124	10,609	4,124	0	0
Total		1,499,678	503,903	1,497,551	503,309	-2,127	-594

KSL DTV Channel 5 Service
Based on FCC OET 69 Prediction
with
Channel 6 as DTV at Vernal, UT



KSL-DT SALT LAKE CITY UT DTV Channel 05
Interference: NTSC = RED DTV = BLUE





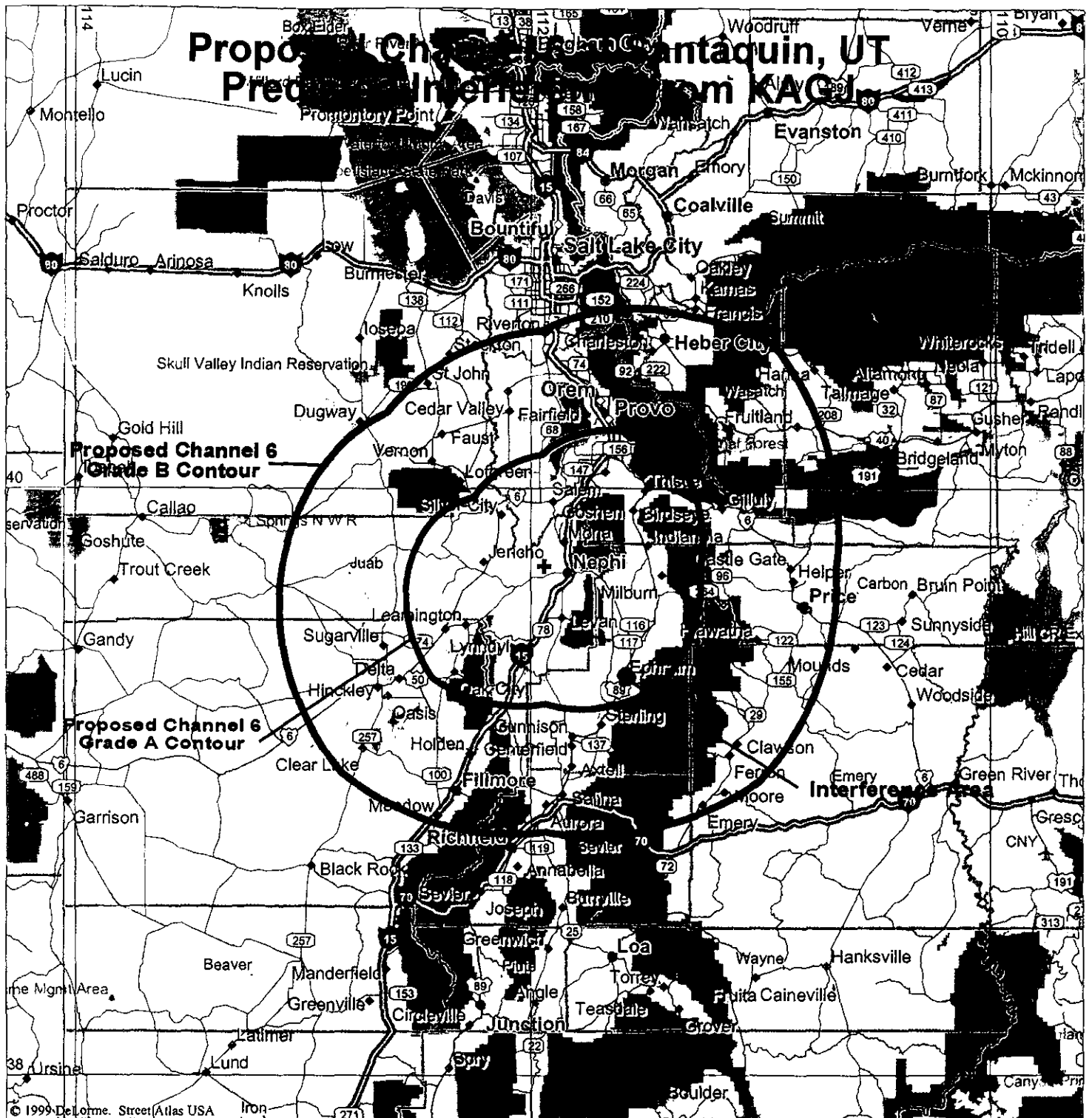
KSL DTV Channel 5 Service
Based on FCC OET 69 Prediction
with
Channel 6 as DTV at Santaquin, UT

KSL-DT SALT LAKE CITY UT DTV Channel 05
Interference: NTSC = RED DTV = BLUE



119.35 dBu 73.675 dBu 28 dBu (Noise Limited Service)
Predicted Longley-Rice Field

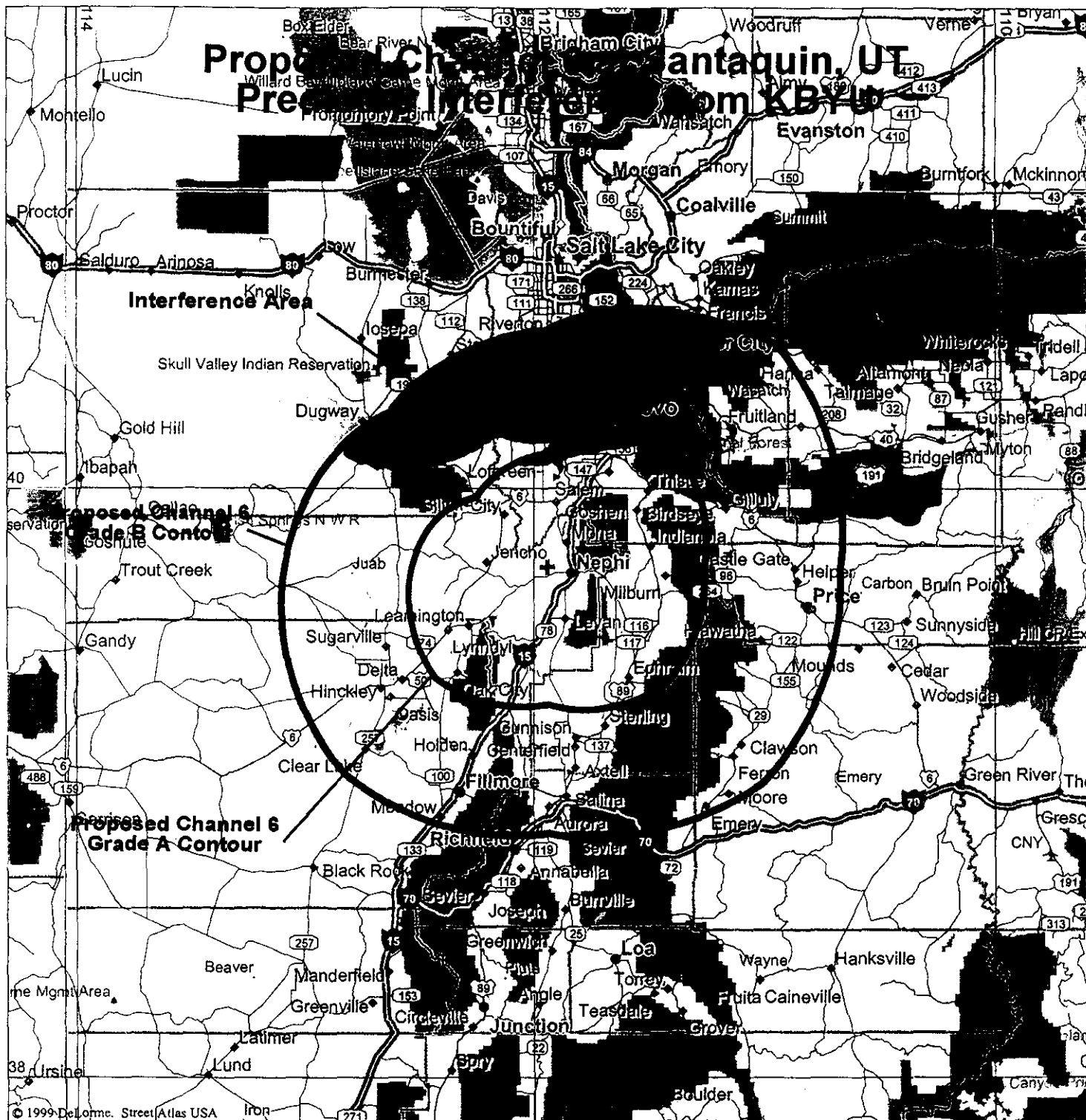
FM Interference Analysis
to
Proposed TV Channel 6
at
Santaquin, UT



Mag 8.00
 Sun Jan 06 14:04 2002
 Scale 1:2,000,000 (at center)

20 Miles
 50 KM

- | | |
|-------------------------------|-------------------------|
| — Major Road | ▲ Park/Reservation |
| — Major Highway | ◇ City |
| ▬ Interstate/Limited Access | ✈ Sched Service Airport |
| ▬ Interstate/Unlimited Access | ◆ Small Town |
| □ Point of Interest | --- County Boundary |
| ● County Seat | --- State Boundary |
| ★ State Capital | Population Center |
| ◇ Large City | Land |



Mag 8.00

Sun Jan 06 14:03 2002

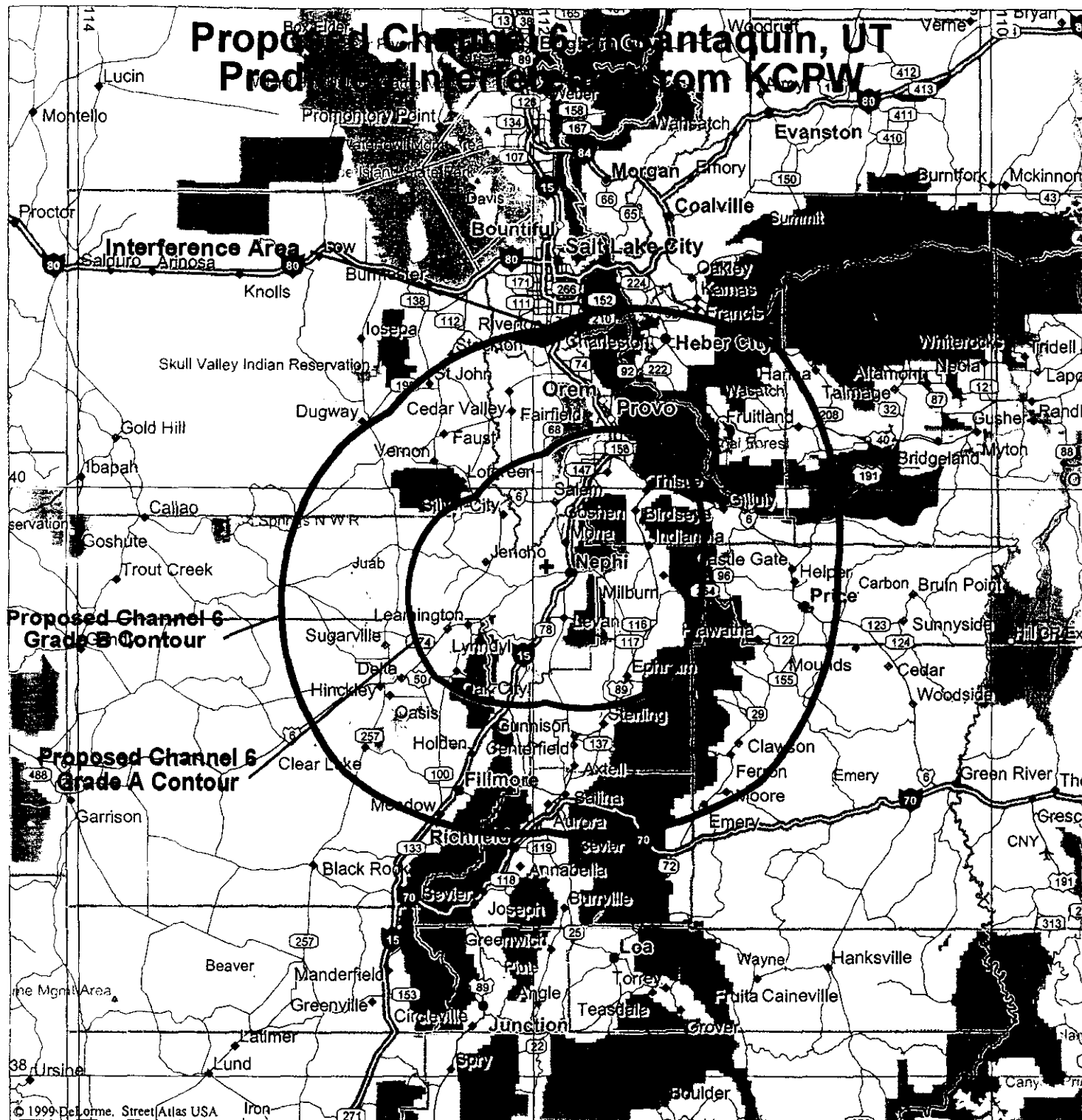
Scale 1:2,000,000 (at center)

20 Miles

50 KM

- | | |
|-------------------------------|-------------------------|
| — Major Road | ▲ Park/Reservation |
| — Major Highway | ◇ City |
| ▬ Interstate/Limited Access | ✈ Sched Service Airport |
| ▬ Interstate/Unlimited Access | ◆ Small Town |
| □ Point of Interest | — County Boundary |
| ● County Seat | — State Boundary |
| ★ State Capital | • Population Center |
| ◇ Large City | Land |

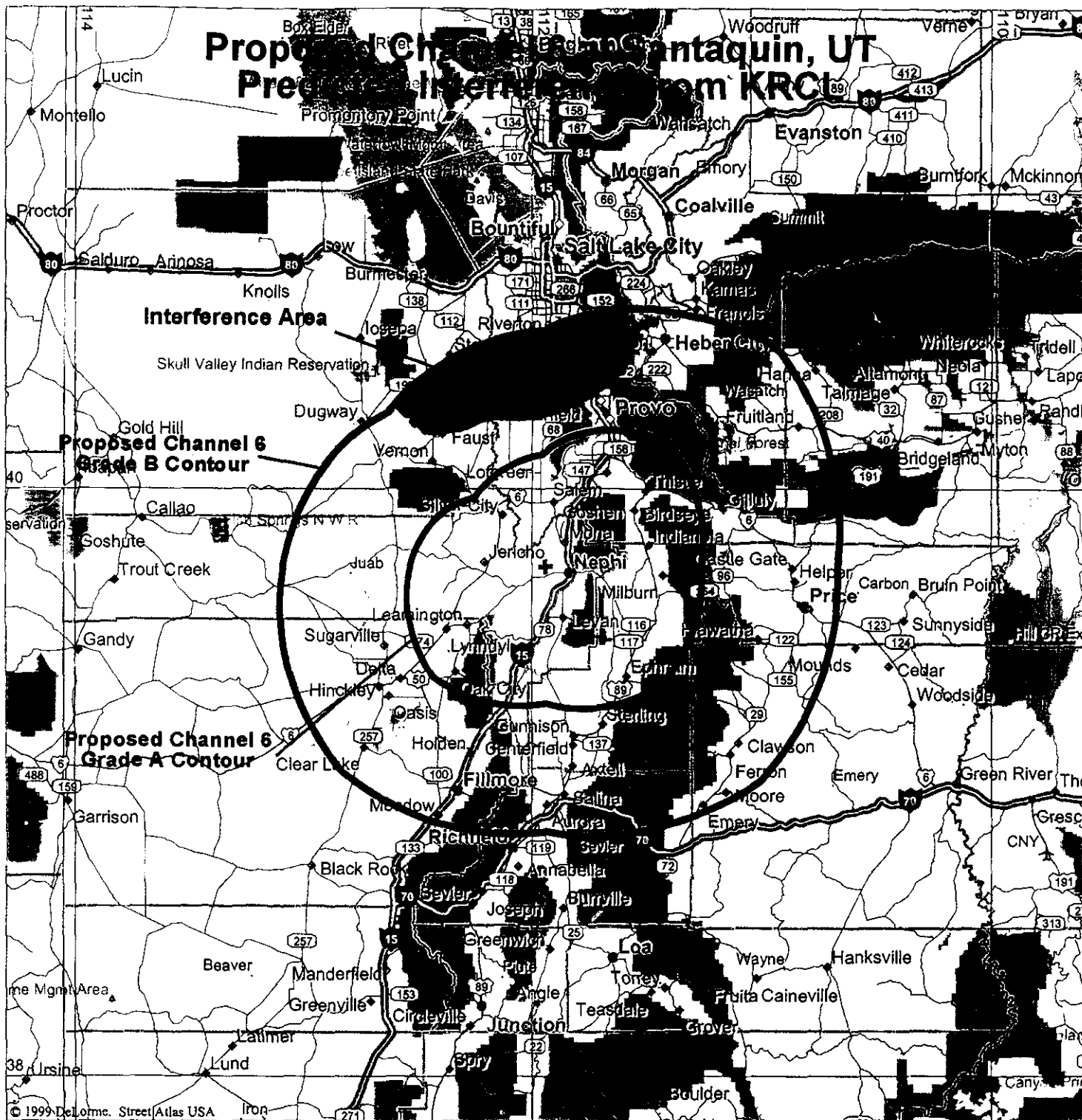
Proposed Channel 6 Salt Lake, UT Predicted Interference from KCPW



Mag 8.00
Sun Jan 06 14:02 2002
Scale 1:2,000,000 (at center)

20 Miles
50 KM

- | | |
|-------------------------------|-------------------------|
| — Major Road | ▲ Park/Reservation |
| — Major Highway | ◇ City |
| ▬ Interstate/Limited Access | ✈ Sched Service Airport |
| ▬ Interstate/Unlimited Access | ◆ Small Town |
| □ Point of Interest | — County Boundary |
| ● County Seat | — State Boundary |
| ★ State Capital | — Population Center |
| ◇ Large City | — Land |



Mag 8.00

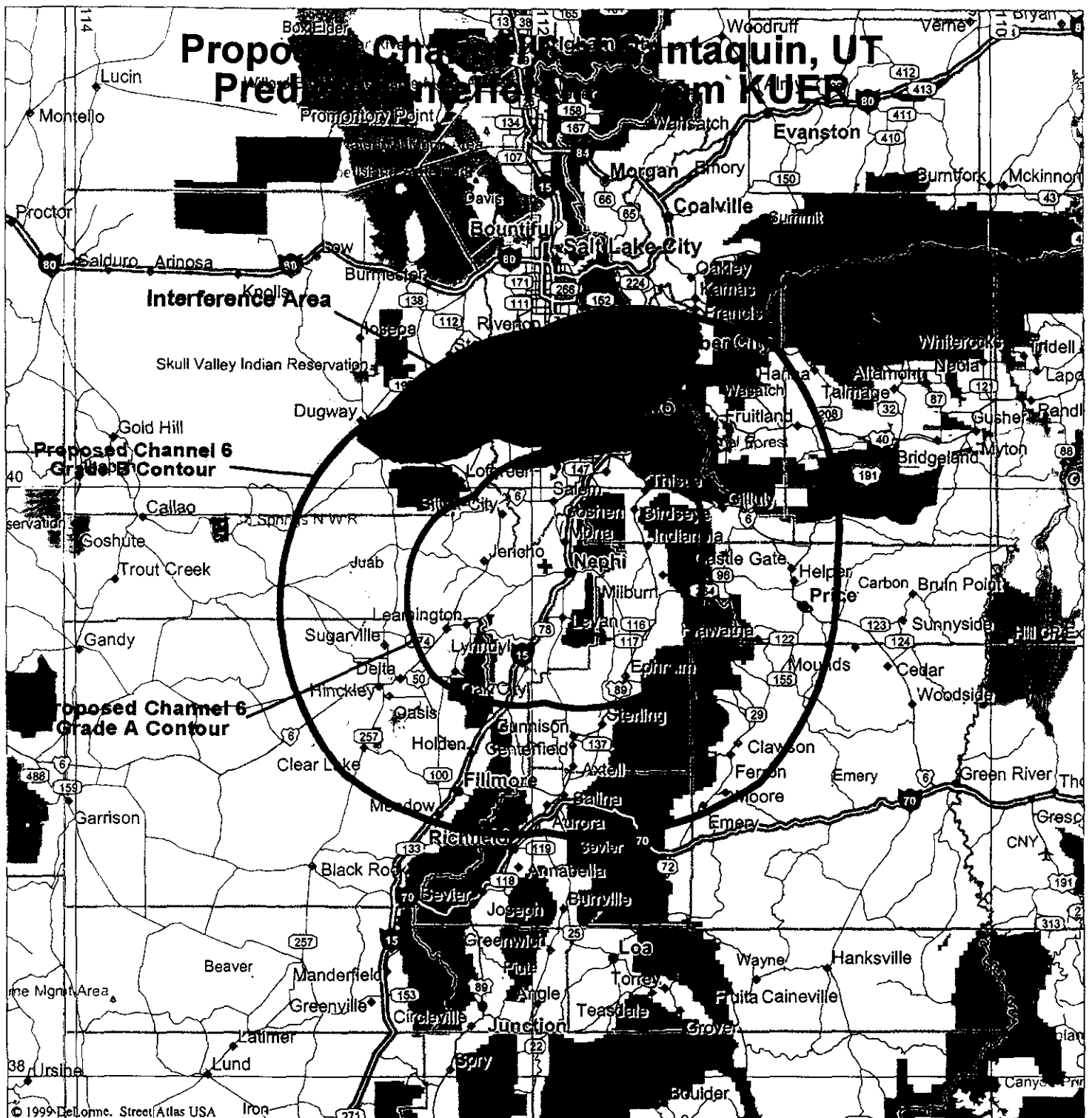
Sun Jan 06 13:59 2002

Scale 1:2,000,000 (at center)

20 Miles

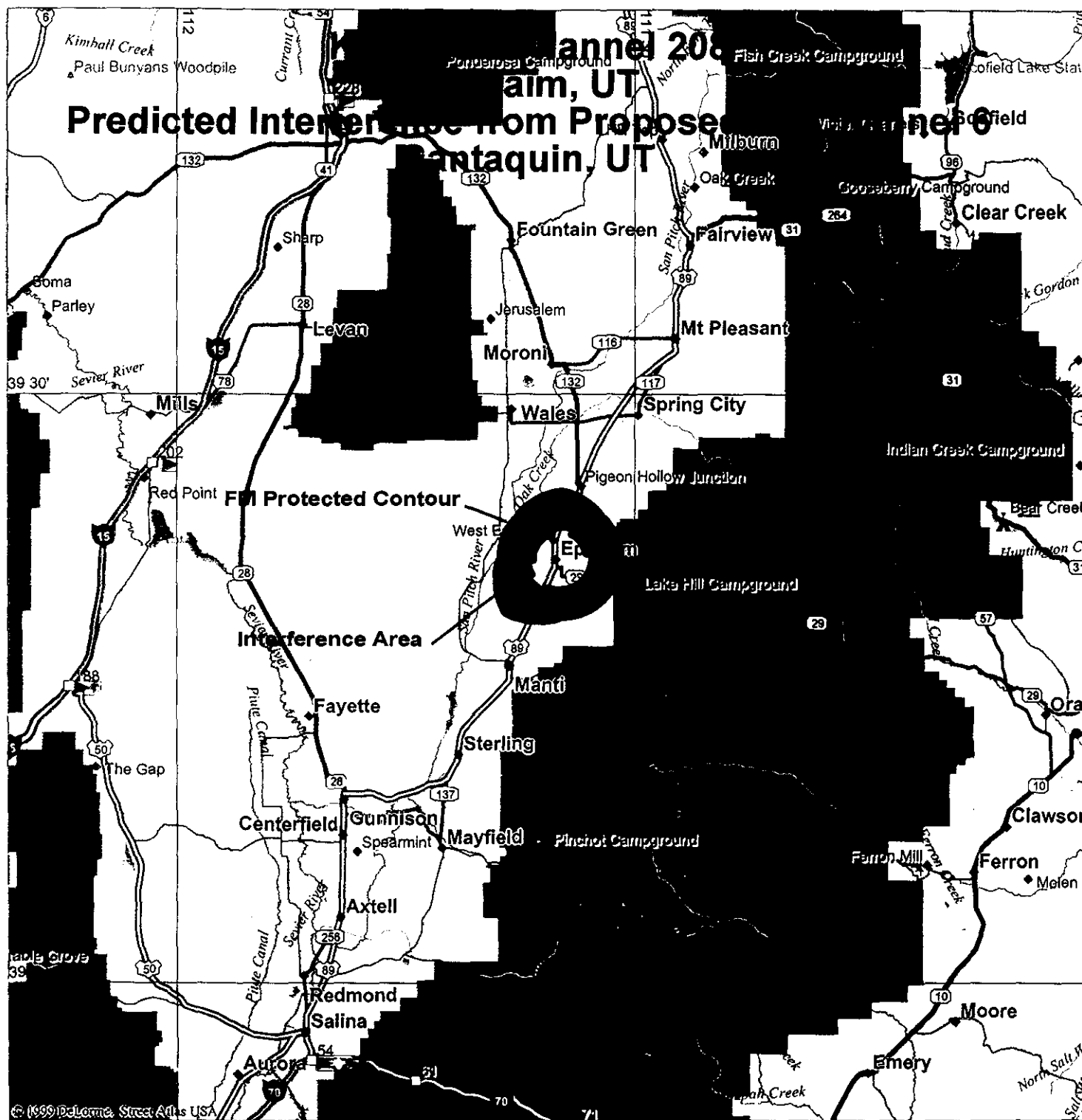
50 KM

- | | |
|-------------------------------|-------------------------|
| — Major Road | ▲ Park/Reservation |
| — Major Highway | ◇ City |
| ▬ Interstate/Limited Access | ✈ Sched Service Airport |
| ▬ Interstate/Unlimited Access | ◆ Small Town |
| □ Point of Interest | — County Boundary |
| ● County Seat | — State Boundary |
| ★ State Capital | — Population Center |
| ◇ Large City | — Land |

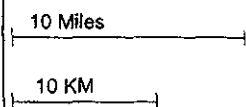


- | | |
|-------------------------------|-------------------------|
| — Major Road | ▲ Park/Reservation |
| — Major Highway | ◇ City |
| ▬ Interstate/Limited Access | ✈ Sched Service Airport |
| ▬ Interstate/Unlimited Access | ◆ Small Town |
| □ Point of Interest | --- County Boundary |
| ● County Seat | --- State Boundary |
| ★ State Capital | Population Center |
| ◇ Large City | Land |

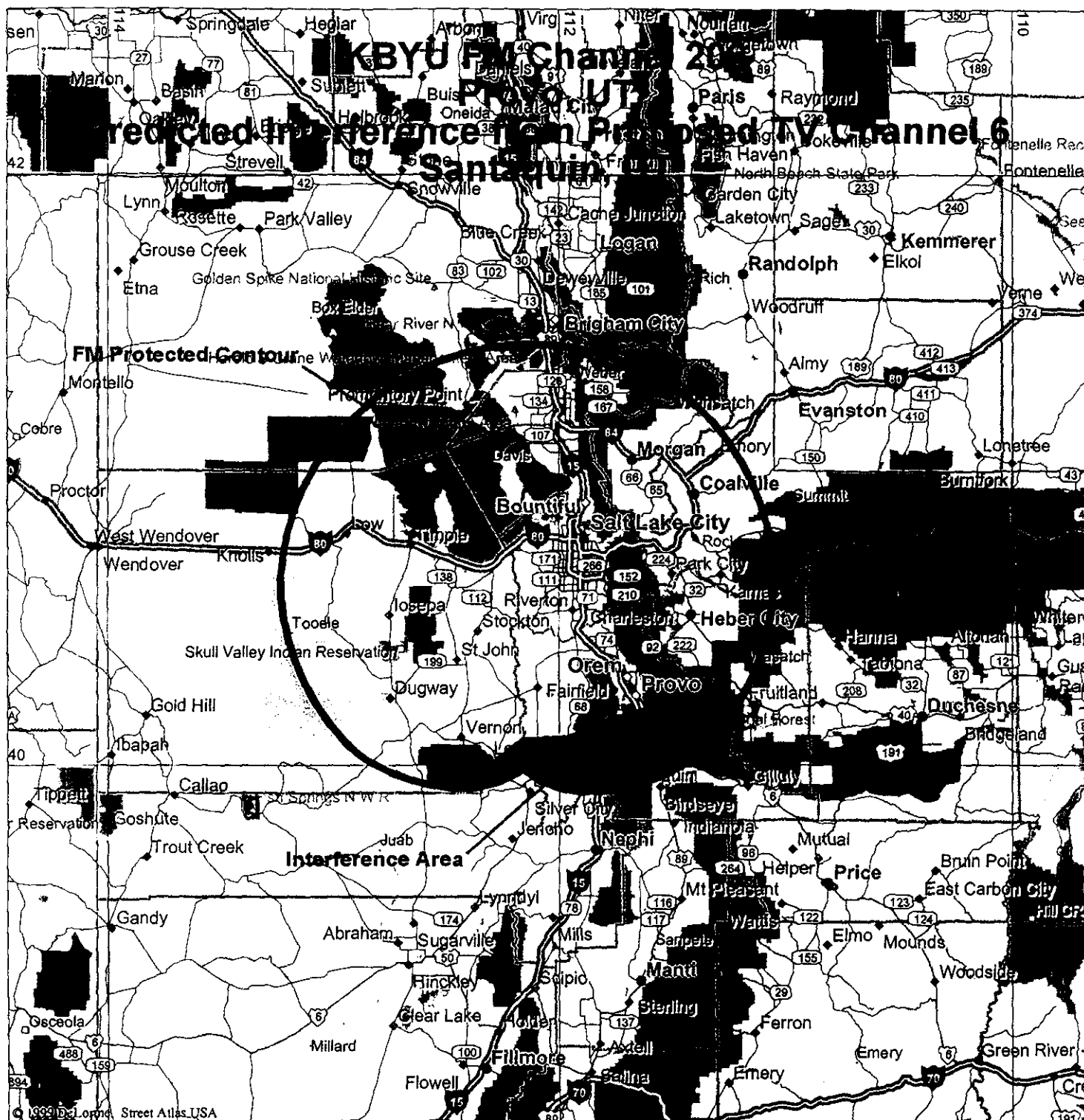
Interference Analysis
to
FM Stations
from
Proposed TV Channel 6
at
Santaquin, UT



Mag 10.00
 Sun Jan 06 16:57 2002
 Scale 1:500,000 (at center)



- | | |
|-----------------------------|-----------------------|
| — Major Connector | ◆ Small Town |
| — Major Forest Road | ▲ Park/Reservation |
| — State Route | ◆ Campground |
| — Primary State Route | ◆ Exit/Gas |
| — Interstate/Limited Access | ◆ Exit/Lodging |
| — US Highway | ◆ Exit/Food |
| □ Exit | ◆ Exit/Other Services |
| ● County Seat | ◆ Locale |



















Mag 8.00

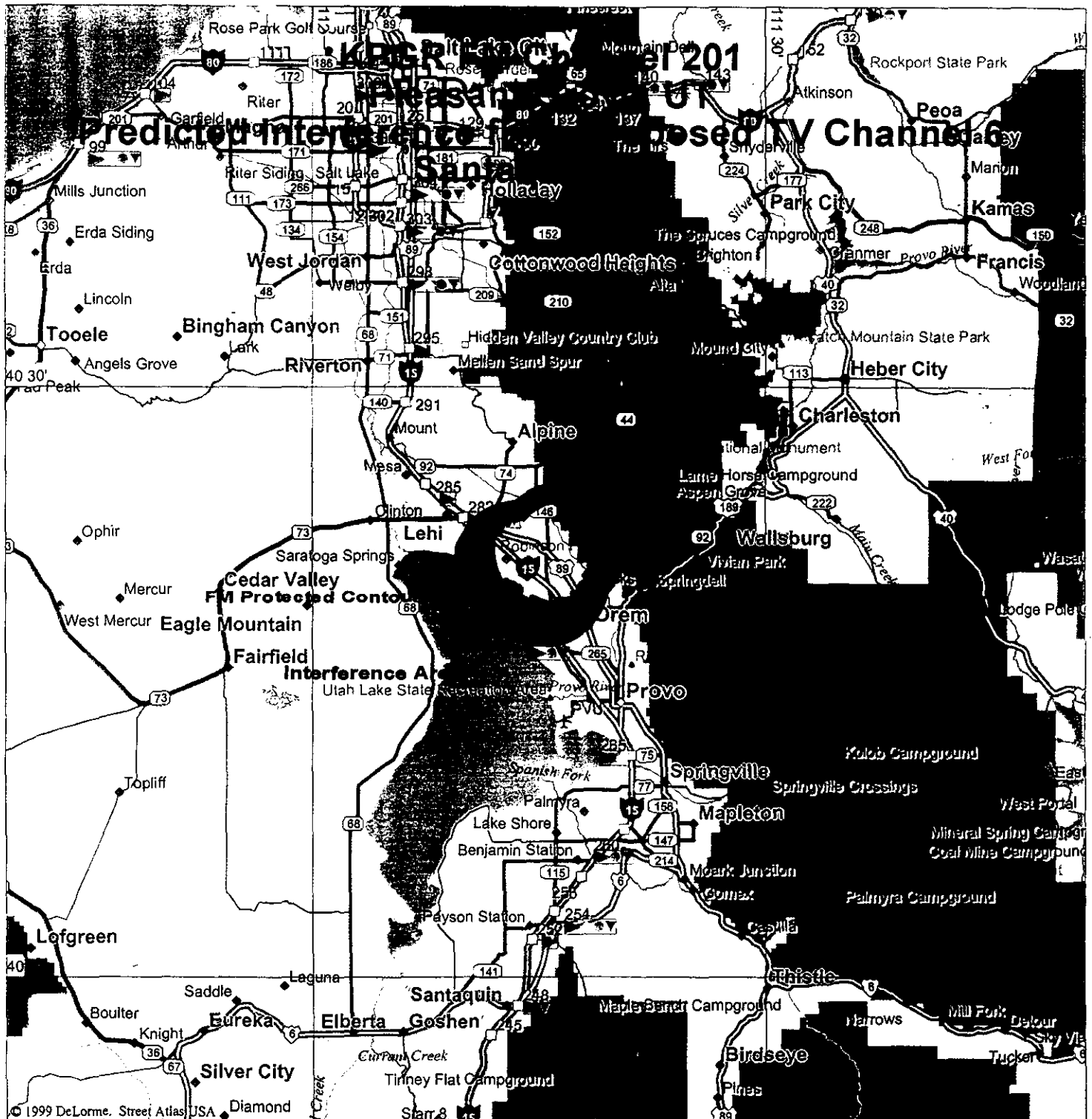
Sun Jan 06 16:57 2002

Scale 1:2,000,000 (at center)

20 Miles

50 KM

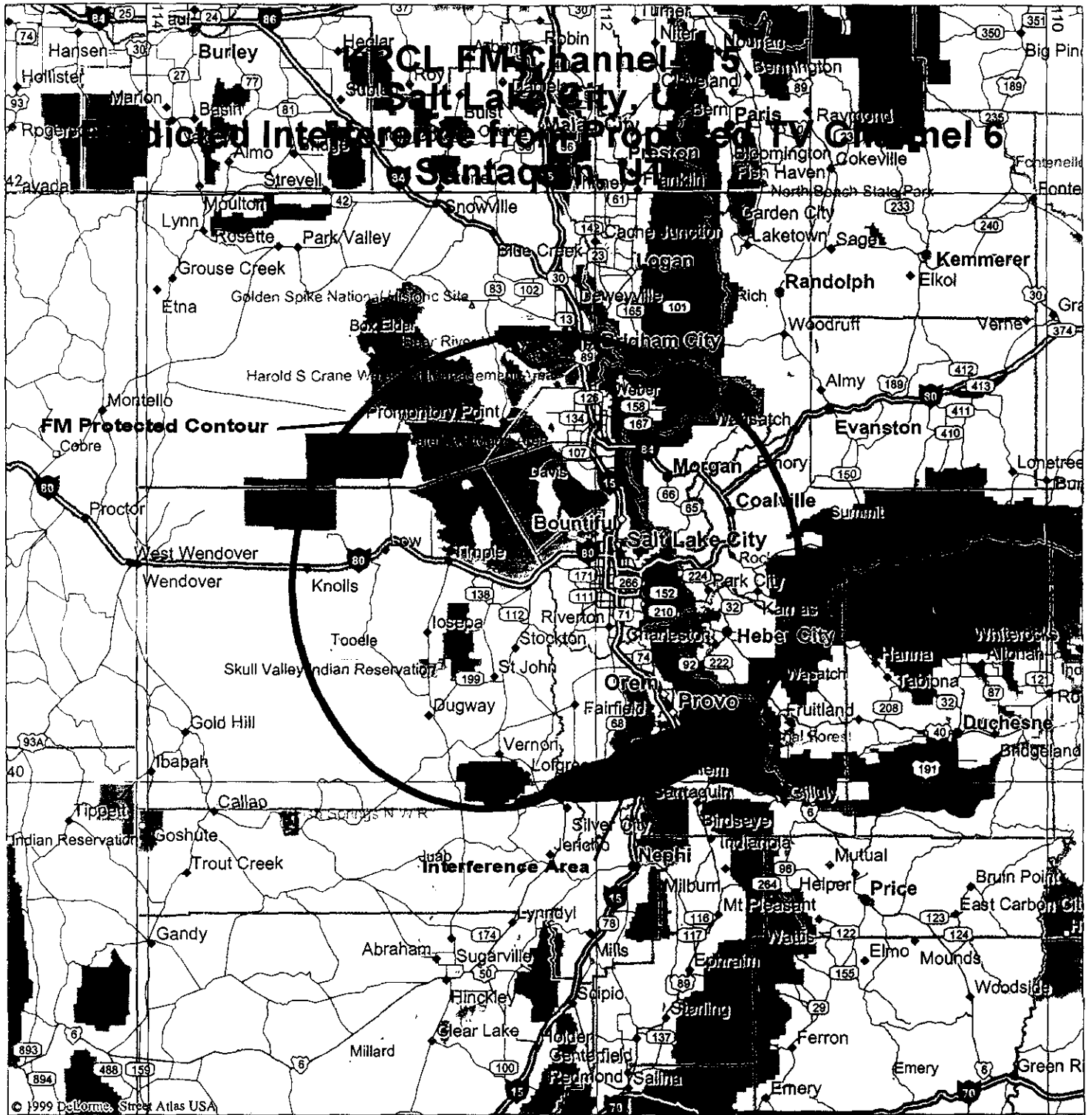
- | | | | |
|---|-----------------------------|---|-------------------|
|  | Major Road |  | Park/Reservation |
|  | Major Highway |  | City |
|  | Interstate/Limited Access |  | Small Town |
|  | Interstate/Unlimited Access |  | County Boundary |
|  | Point of Interest |  | State Boundary |
|  | County Seat |  | Population Center |
|  | State Capital |  | Land |
|  | Large City |  | Water |



Mag 10.00
 Sun Jan 06 16:56 2002
 Scale 1:500,000 (at center)

10 Miles
 10 KM

- | | |
|-----------------------------|---------------------|
| — Major Connector | □ Point of Interest |
| — Major Forest Road | ● County Seat |
| — State Route | ★ State Capital |
| — Primary State Route | ◆ Small Town |
| ⚡ Rest Area | ◇ Large City |
| ▭ Interstate/Limited Access | ▲ Park/Reservation |
| ▭ US Highway | ▲ Campground |
| □ Exit | ▲ Exit/Gas |



Mag 8.00

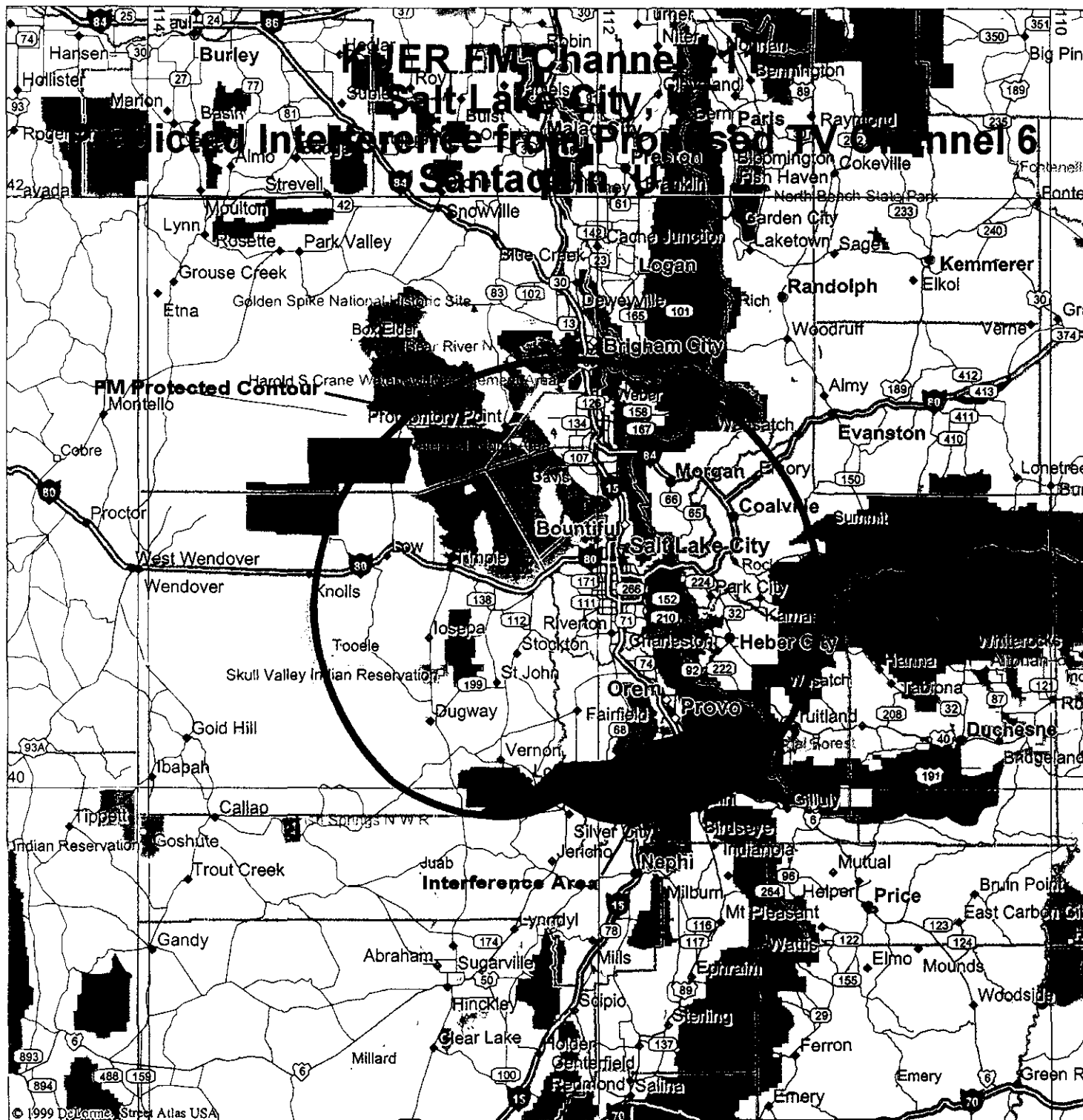
Sun Jan 06 16:56 2002

Scale 1:2,000,000 (at center)

20 Miles

50 KM

- | | |
|-------------------------------|---------------------|
| — Major Road | ▲ Park/Reservation |
| — Major Highway | ◇ City |
| ▬ Interstate/Limited Access | ◆ Small Town |
| ▬ Interstate/Unlimited Access | — County Boundary |
| □ Point of Interest | — State Boundary |
| ● County Seat | • Population Center |
| ★ State Capital | Land |
| ◇ Large City | Water |



Mag 8.00

Sun Jan 06 16:54 2002

Scale 1:2,000,000 (at center)

20 Miles

50 KM

Major Road

Major Highway

Interstate/Limited Access

Interstate/Unlimited Access

Point of Interest

County Seat

State Capital

Large City

Park/Reservation

City

Small Town

County Boundary

State Boundary

Population Center

Land

Water